

# HOUSE BILL No. 1228

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-18-2; IC 16-34; IC 35-52-16-23.5.

**Synopsis:** Abortion matters. Prohibits a person from performing an abortion if the person knows that the pregnant woman is seeking the abortion because of: (1) the sex of the fetus; or (2) a diagnosis or potential diagnosis of the fetus having Down syndrome or a genetic abnormality. Makes it a Level 5 felony if a person knowingly or intentionally performs a sex selective abortion or an abortion because of a diagnosis of Down syndrome or other genetic abnormality. Provides for civil relief. Requires certain information to be provided by the parent or legal guardian of a minor pregnant woman when giving written consent for the minor to have an abortion. Requires the physician to: (1) maintain the information in the minor pregnant woman's medical records; and (2) sign an affidavit concerning the documents. Makes technical corrections.

**Effective:** July 1, 2015.

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January 13, 2015, read first time and referred to Committee on Public Policy.

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First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1228

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A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 16-18-2-100.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2015]: **Sec. 100.5. "Down syndrome", for**  
4 **purposes of IC 16-34-3, has the meaning set forth in IC 16-34-3-1.**  
5 SECTION 2. IC 16-18-2-148.2 IS ADDED TO THE INDIANA  
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
7 [EFFECTIVE JULY 1, 2015]: **Sec. 148.2. "Genetic abnormality", for**  
8 **purposes of IC 16-34-3, has the meaning set forth in IC 16-34-3-2.**  
9 SECTION 3. IC 16-18-2-328.6 IS ADDED TO THE INDIANA  
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
11 [EFFECTIVE JULY 1, 2015]: **Sec. 328.6. "Sex selective abortion",**  
12 **for purposes of IC 16-34-3, has the meaning set forth in**  
13 **IC 16-34-3-3.**  
14 SECTION 4. IC 16-34-2-1, AS AMENDED BY P.L.136-2013,  
15 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2015]: Sec. 1. (a) Abortion shall in all instances be a criminal act, except when performed under the following circumstances:

(1) **Except as prohibited in IC 16-34-3**, during the first trimester of pregnancy for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) the abortion is performed by the physician;

(B) the woman submitting to the abortion has filed her consent with her physician. However, if in the judgment of the physician the abortion is necessary to preserve the life of the woman, her consent is not required; and

(C) the woman submitting to the abortion has filed with her physician the written consent of her parent or legal guardian if required under section 4 of this chapter.

However, an abortion inducing drug may not be dispensed, prescribed, administered, or otherwise given to a pregnant woman after nine (9) weeks of postfertilization age unless the Food and Drug Administration has approved the abortion inducing drug to be used for abortions later than nine (9) weeks of postfertilization age. A physician shall examine a pregnant woman in person before prescribing or dispensing an abortion inducing drug. As used in this subdivision, "in person" does not include the use of telehealth or telemedicine services.

(2) **Except as prohibited in IC 16-34-3**, for an abortion performed by a surgical procedure, after the first trimester of pregnancy and before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age, for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion during the first trimester are present and adhered to; and

(B) the abortion is performed in a hospital or ambulatory outpatient surgical center (as defined in IC 16-18-2-14).

(3) Except as provided in subsection (b) **or as prohibited in IC 16-34-3**, and for an abortion performed by a surgical procedure, at the earlier of viability of the fetus or twenty (20) weeks of postfertilization age and any time after, for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age are present and adhered to;



(B) the abortion is performed in compliance with section 3 of this chapter; and

(C) before the abortion the attending physician shall certify in writing to the hospital in which the abortion is to be performed, that in the attending physician's professional, medical judgment, after proper examination and review of the woman's history, the abortion is necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman. All facts and reasons supporting the certification shall be set forth by the physician in writing and attached to the certificate.

(b) A person may not knowingly or intentionally perform a partial birth abortion unless a physician reasonably believes that:

(1) performing the partial birth abortion is necessary to save the mother's life; and

(2) no other medical procedure is sufficient to save the mother's life.

SECTION 5. IC 16-34-2-1.1, AS AMENDED BY P.L.98-2014, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1.1. (a) An abortion shall not be performed except with the voluntary and informed consent of the pregnant woman upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if the following conditions are met:

(1) At least eighteen (18) hours before the abortion and in the presence of the pregnant woman, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice nurse (as defined in IC 25-23-1-1(b)), or a certified nurse midwife (as defined in IC 34-18-2-6.5) to whom the responsibility has been delegated by the physician who is to perform the abortion or the referring physician has informed the pregnant woman orally and in writing of the following:

(A) The name of the physician performing the abortion, the physician's medical license number, and an emergency telephone number where the physician or the physician's designee may be contacted on a twenty-four (24) hour a day, seven (7) day a week basis.

(B) That follow-up care by the physician or the physician's designee (if the designee is licensed under IC 25-22.5) ~~and~~ is available on an appropriate and timely basis when clinically necessary.



- 1 (C) The nature of the proposed procedure or information  
 2 concerning the abortion inducing drug.  
 3 (D) Objective scientific information of the risks of and  
 4 alternatives to the procedure or the use of an abortion inducing  
 5 drug, including:  
 6 (i) the risk of infection and hemorrhage;  
 7 (ii) the potential danger to a subsequent pregnancy; and  
 8 (iii) the potential danger of infertility.  
 9 (E) That human physical life begins when a human ovum is  
 10 fertilized by a human sperm.  
 11 (F) The probable gestational age of the fetus at the time the  
 12 abortion is to be performed, including:  
 13 (i) a picture of a fetus;  
 14 (ii) the dimensions of a fetus; and  
 15 (iii) relevant information on the potential survival of an  
 16 unborn fetus;  
 17 at this stage of development.  
 18 (G) That objective scientific information shows that a fetus  
 19 can feel pain at or before twenty (20) weeks of postfertilization  
 20 age.  
 21 (H) The medical risks associated with carrying the fetus to  
 22 term.  
 23 (I) The availability of fetal ultrasound imaging and  
 24 auscultation of fetal heart tone services to enable the pregnant  
 25 woman to view the image and hear the heartbeat of the fetus  
 26 and how to obtain access to these services.  
 27 (J) That the pregnancy of a child less than fifteen (15) years of  
 28 age may constitute child abuse under Indiana law if the act  
 29 included an adult and must be reported to the department of  
 30 child services or the local law enforcement agency under  
 31 IC 31-33-5.  
 32 **(K) That Indiana does not allow a fetus to be aborted solely**  
 33 **because of the fetus's gender or diagnosis or potential**  
 34 **diagnosis of the fetus having Down syndrome or a genetic**  
 35 **abnormality.**  
 36 (2) At least eighteen (18) hours before the abortion, the pregnant  
 37 woman will be informed orally and in writing of the following:  
 38 (A) That medical assistance benefits may be available for  
 39 prenatal care, childbirth, and neonatal care from the county  
 40 office of the division of family resources.  
 41 (B) That the father of the unborn fetus is legally required to  
 42 assist in the support of the child. In the case of rape, the



- 1 information required under this clause may be omitted.
- 2 (C) That adoption alternatives are available and that adoptive
- 3 parents may legally pay the costs of prenatal care, childbirth,
- 4 and neonatal care.
- 5 (D) That there are physical risks to the pregnant woman in
- 6 having an abortion, both during the abortion procedure and
- 7 after.
- 8 (E) That Indiana has enacted the safe haven law under
- 9 IC 31-34-2.5.
- 10 (F) The:
- 11 (i) Internet web site address of the state department of
- 12 health's web site; and
- 13 (ii) description of the information that will be provided on
- 14 the web site and that are;
- 15 described in section 1.5 of this chapter.
- 16 (G) For the facility in which the abortion is to be performed,
- 17 an emergency telephone number that is available and
- 18 answered on a twenty-four (24) hour a day, seven (7) day a
- 19 week basis.
- 20 (3) The pregnant woman certifies in writing, on a form developed
- 21 by the state department, before the abortion is performed, that:
- 22 (A) the information required by subdivisions (1) and (2) has
- 23 been provided to the pregnant woman;
- 24 (B) the pregnant woman has been offered by the provider the
- 25 opportunity to view the fetal ultrasound imaging and hear the
- 26 auscultation of the fetal heart tone if the fetal heart tone is
- 27 audible and that the woman has:
- 28 (i) viewed or refused to view the offered fetal ultrasound
- 29 imaging; and
- 30 (ii) listened to or refused to listen to the offered auscultation
- 31 of the fetal heart tone if the fetal heart tone is audible; and
- 32 (C) the pregnant woman has been given a written copy of the
- 33 printed materials described in section 1.5 of this chapter.
- 34 (4) At least eighteen (18) hours before the abortion and in the
- 35 presence of the pregnant woman, the physician who is to perform
- 36 the abortion, the referring physician or a physician assistant (as
- 37 defined in IC 25-27.5-2-10), an advanced practice nurse (as
- 38 defined in IC 25-23-1-1(b)), or a **certified nurse** midwife (as
- 39 defined in ~~IC 34-18-2-19~~ **IC 34-18-2-6.5**) to whom the
- 40 responsibility has been delegated by the physician who is to
- 41 perform the abortion or the referring physician has provided the
- 42 pregnant woman with a color copy of the informed consent



brochure described in section 1.5 of this chapter by printing the informed consent brochure from the state department's Internet web site and including the following information on the back cover of the brochure:

(A) The name of the physician performing the abortion and the physician's medical license number.

(B) An emergency telephone number where the physician or the physician's designee may be contacted twenty-four (24) hours a day, seven (7) days a week.

(C) A statement that follow-up care by the physician or the physician's designee who is licensed under IC 25-22.5 is available on an appropriate and timely basis when clinically necessary.

(b) Before an abortion is performed, the provider shall perform, and the pregnant woman shall view, the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible unless the pregnant woman certifies in writing, on a form developed by the state department, before the abortion is performed, that the pregnant woman:

(1) does not want to view the fetal ultrasound imaging; and

(2) does not want to listen to the auscultation of the fetal heart tone if the fetal heart tone is audible.

SECTION 6. IC 16-34-2-4, AS AMENDED BY P.L.193-2011, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) No physician shall perform an abortion on an unemancipated pregnant woman less than eighteen (18) years of age without first having obtained:

(1) the **notarized** written consent of **the unemancipated pregnant woman and** one (1) of the parents or the legal guardian of the minor pregnant woman;

(2) **government issued proof of identification of the parent or the legal guardian of the minor pregnant woman; and**

(3) **written documentation that establishes that the parent or legal guardian is the lawful parent or legal guardian of the minor pregnant woman.**

**The physician shall keep records of the documents required under this subsection in the minor pregnant woman's medical file for at least seven (7) years.**

(b) A minor:

(1) who objects to having to obtain the written consent of her parent or legal guardian under this section; or

(2) whose parent or legal guardian refuses to consent to an



1           abortion;  
 2       may petition, on her own behalf or by next friend, the juvenile court in  
 3       the county in which the pregnant woman resides or in which the  
 4       abortion is to be performed, for a waiver of the parental consent  
 5       requirement under subsection (a). A next friend may not be a physician  
 6       or provider of abortion services, representative of the physician or  
 7       provider, or other person that may receive a direct financial benefit  
 8       from the performance of an abortion.

9           (c) A physician who feels that compliance with the parental consent  
 10       requirement in subsection (a) would have an adverse effect on the  
 11       welfare of the pregnant minor or on her pregnancy may petition the  
 12       juvenile court within twenty-four (24) hours of the abortion request for  
 13       a waiver of the parental consent requirement under subsection (a).

14          (d) The juvenile court must rule on a petition filed by a pregnant  
 15       minor under subsection (b) or by her physician under subsection (c)  
 16       within forty-eight (48) hours of the filing of the petition. Before ruling  
 17       on the petition, the court shall consider the concerns expressed by the  
 18       pregnant minor and her physician. The requirement of parental consent  
 19       under this section shall be waived by the juvenile court if the court  
 20       finds that the minor is mature enough to make the abortion decision  
 21       independently or that an abortion would be in the minor's best interests.

22          (e) Unless the juvenile court finds that the pregnant minor is already  
 23       represented by an attorney, the juvenile court shall appoint an attorney  
 24       to represent the pregnant minor in a waiver proceeding brought by the  
 25       minor under subsection (b) and on any appeals. The cost of legal  
 26       representation appointed for the minor under this section shall be paid  
 27       by the county.

28          (f) A minor or her physician who desires to appeal an adverse  
 29       judgment of the juvenile court in a waiver proceeding under subsection  
 30       (b) or (c) is entitled to an expedited appeal, under rules to be adopted  
 31       by the supreme court.

32          (g) All records of the juvenile court and of the supreme court or the  
 33       court of appeals that are made as a result of proceedings conducted  
 34       under this section are confidential.

35          (h) A minor who initiates legal proceedings under this section is  
 36       exempt from the payment of filing fees.

37          (i) This section shall not apply where there is an emergency need for  
 38       a medical procedure to be performed such that continuation of the  
 39       pregnancy provides an immediate threat and grave risk to the life or  
 40       health of the pregnant woman and the attending physician so certifies  
 41       in writing.

42          **(j) A physician receiving parental consent under subsection (a)**





shall execute an affidavit for inclusion in the minor pregnant woman's medical record. The affidavit must contain the following information:

(1) The physician's name.

(2) Certification that, to the physician's best information and belief, a reasonable person under similar circumstances would rely on the information provided by the minor pregnant woman and the minor pregnant woman's parent or legal guardian as sufficient evidence of identity and relationship.

(3) The physician's signature.

SECTION 7. IC 16-34-3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

**Chapter 3. Sex Selective and Genetic Abnormality Abortion Ban**

**Sec. 1.** As used in this chapter, "Down syndrome" means a chromosomal disorder associated with an extra chromosome 21 or an effective trisomy for chromosome 21.

**Sec. 2.** As used in this chapter, "genetic abnormality" means any disease, defect, or disorder that is genetically inherited. The term includes the following:

(1) A physical disability.

(2) A mental disability or retardation.

(3) A physical disfigurement.

(4) Scoliosis.

(5) Dwarfism.

(6) Down syndrome.

(7) Albinism.

(8) Amelia.

(9) A physical or mental abnormality or disease.

**Sec. 3.** As used in this chapter, "sex selective abortion" means an abortion that is performed solely because of the gender of the fetus.

**Sec. 4. (a)** A person may not intentionally perform or attempt to perform an abortion before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking a sex selective abortion.

**(b)** A person may not intentionally perform or attempt to perform an abortion after viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking a sex selective abortion.

**(c)** This section is severable as specified in IC 1-1-1-8.

**Sec. 5. (a)** A person may not intentionally perform or attempt to



perform an abortion before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because the fetus has been diagnosed with Down syndrome or a potential for Down syndrome.

(b) A person may not intentionally perform or attempt to perform an abortion after viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because the fetus has been diagnosed with Down syndrome or a potential for Down syndrome.

(c) This section is severable as specified in IC 1-1-1-8.

Sec. 6. (a) A person may not intentionally perform or attempt to perform an abortion before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because the fetus has been diagnosed with a genetic abnormality or a potential for a genetic abnormality.

(b) A person may not intentionally perform or attempt to perform an abortion after viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because the fetus has been diagnosed with a genetic abnormality or a potential for a genetic abnormality.

(c) This section is severable as specified in IC 1-1-1-8.

Sec. 7. (a) A person who knowingly or intentionally performs an abortion in violation of this chapter commits a Level 5 felony.

(b) In addition to the criminal penalty under subsection (a), a person who violates this chapter may be subject to:

(1) disciplinary sanctions under IC 25-1-9; and

(2) civil liability for wrongful death and medical malpractice.

(c) A pregnant woman upon whom an abortion is performed in violation of this chapter may not be prosecuted for violating or conspiring to violate this chapter.

Sec. 8. Any records that are made as a result of proceedings conducted under section 7 of this chapter are confidential.

SECTION 8. IC 35-52-16-23.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 23.5. IC 16-34-3-7 defines a crime concerning abortion.

